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Before The  
Federal Communications Commission  
Washington, D.C. 20554

Feb 12 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum to  
Encourage Innovation in the Use  
of New Telecommunications  
Technologies

ET Docket No. 92-9

REPLY COMMENTS OF PERSONAL COMMUNICATIONS NETWORK  
SERVICES OF NEW YORK, INC., A LOCATE COMPANY,  
ON THE THIRD NOTICE OF PROPOSED RULEMAKING

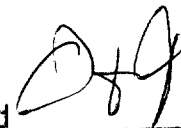
Andrew D. Lipman  
Shelley L. Spencer

Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-3851  
(202) 944-4798

Its Attorneys

February 12, 1993

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SERVICES OF NEW YORK, INC., A LOCATE COMPANY,  
ON THE THIRD NOTICE OF PROPOSED RULEMAKING

Personal Communications Network Services of New York, Inc., a LOCATE company ("PCNS-NY"), by its undersigned counsel, hereby submits these reply comments that respond to the comments filed on the Federal Communications Commission's ("FCC's" or "Commission's") Third Notice of Proposed Rulemaking ("Notice"). The comments filed in response to the Notice reflect a consensus that relocation of existing incumbent 2 GHz microwave users ("existing OFS users") to alternative frequencies or media ("migration") is critical to the success of PCS and an essential and viable spectrum management tool. The Commission has addressed the use of migration negotiations as a means of spectrum reallocation in this proceeding. Migration is also a fundamental tenet of the FCC's proposal for PCS.<sup>1/</sup> As a pioneer

<sup>1/</sup> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-314, Notice of Proposed Rulemaking, (Rel. Aug. 14, 1992) ("PCS NPRM").

of migration techniques, PCNS-NY has maintained consistently and demonstrated through its efforts that existing OFS users are willing and can be relocated to new facilities outside the 2 GHz band without sacrificing the quality or security of their communications capabilities.

#### **I. MIGRATION TECHNIQUES FOR UNLICENSED PCS.**

For the past two years, PCNS-NY has dedicated its resources to developing and demonstrating migration techniques for licensed PCS providers. PCNS-NY recently has begun to share its migration techniques with equipment manufacturers developing unlicensed PCS. Through these discussions PCNS-NY has confirmed the viability and possibilities of migration for liberating spectrum for both licensed and unlicensed PCS. Migration of existing OFS users will be essential to the success of unlicensed PCS. As stated by Rolm in its comments, "it is generally accepted that unlicensed devices cannot operate on a co-primary basis with fixed microwave."<sup>2/</sup> Comments filed by existing users and potential equipment manufacturers of unlicensed PCS in this and other dockets confirm that existing OFS users and unlicensed PCS are incapable of operating on shared spectrum.<sup>3/</sup>

PCNS-NY is working with "The User PCS Committee for 2 GHz Microwave Transition and Management" to develop specific procedures to relocate the incumbents of the proposed 1910-1930

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<sup>2/</sup> Rolm Comments at 2.

<sup>3/</sup> See, e.g., Comments on PCS NPRM filed by Apple Computer, Inc., California Microwave, Hewlett Packard Company, and Northern Telecom, Inc.

MHz unlicensed PCS band. The members of this committee, mostly manufacturers of future unlicensed PCS devices, have tentatively agreed to form a consortium to relocate the incumbents of this band. PCNS-NY is working with the committee to help assume responsibility for this undertaking. As the only entity that has successfully conducted relocation negotiations with incumbents of the 1850-1990 MHz licensed band, including local government and public safety organizations, PCNS-NY is in a unique position to aid and participate in paving the way for the development of new PCS technologies.

## **II. COMMENTS ON THE TRANSITION PLAN.**

The comments filed in response to the Notice endorse migration as a means of providing spectrum for PCS. The comments address the technicalities of accomplishing migration. The comments focus primarily on three issues: (1) the length of the transition period; (2) the payment of relocation costs; and (3) the treatment of modifications of existing licenses and new OFS license requests.

### **1. The Transition Period Should Not Exceed Three Years in Metropolitan Areas.**

The length of the transition period will determine the viability of PCS especially in metropolitan areas. Demand studies performed by PCNS-NY and other parties have demonstrated the pent up demand for PCS. In metropolitan areas the demand for PCS is magnified by the high volume use of cellular service and

the congestion on certain cellular bands.<sup>4/</sup> Consumer requirements for high quality service also command that adequate, interference protected spectrum be available for PCS upon introduction.

In order to accommodate the demand for PCS, PCNS-NY recommended in its comments that the Commission adopt a transition period no longer than three years in length. Other commentors have endorsed a three year transition plan.<sup>5/</sup>

A three year transition period is reasonable. The American Public Power Association stated that in a survey of its members on average a four year transition period was required.<sup>6/</sup> These results parallel the findings of UTC.<sup>7/</sup> The Southern Natural Gas Company supports a three year transition period in metropolitan areas. The calls for blanket transition periods in excess of three years are the product of protectionist and unsupported tactics employed by some existing OFS users. In a demonstration of candor, Southern Natural Gas Company stated:

As an incumbent user, it would be our natural reaction to want to hold out for the longest transition period we could get. Even though we see the addition of personal communications services (PCS) as a benefit to our company in the long term, we must first protect our investment in the system in which we currently operate.

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<sup>4/</sup> See PCNS-NY's Progress Report dated June 28, 1991 (containing results of cellular telephone performance survey).

<sup>5/</sup> See generally, Comments of American Personal Communications, Ameritech, Associated PCN Company and Time Warner Telecommunications, Inc.

<sup>6/</sup> American Public Power Association Comments at 4.

<sup>7/</sup> Id.

We do not believe one transition period length should be held for all areas. We suggest having a shorter transition period (3 years) for major metropolitan areas and a somewhat longer one for rural areas (8 years).<sup>8/</sup>

The true ingenuity of migration is that existing users can have the additional benefit of PCS without losing their investment. Negotiated migration offers existing OFS users a replacement system the costs of which are paid for by the PCS licensee. As Southern Natural Gas Company points out, PCS also holds promise as a new and important communications tool for existing OFS users. Utilities, public safety organizations and railroads all stand to benefit from PCS as a service user or possibly a service provider.

PCNS-NY would support transition periods of varying length for metropolitan and rural areas as proposed by Southern Natural Gas Company. PCNS-NY appreciates the needs of rural users for both PCS and existing OFS facilities. In comments filed by PCNS-NY in the Commission's PCS rulemaking, PCNS-NY has not opposed the participation by rural LECS in PCS licensing.<sup>9/</sup> The population difference between rural and metropolitan areas makes it likely that less spectrum will be required to provide PCS immediately in rural areas than in metropolitan areas.

PCNS-NY continues to believe that the best incentive for voluntary migration that will accelerate the deployment of PCS

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<sup>8/</sup> Southern Natural Gas Company Comments at 2.

<sup>9/</sup> PCNS-NY Comments on PCS NPRM (filed November 9, 1992) at n.41.

and conserve the Commission's resources is to provide a transition plan that leads to conversion to secondary status not to an involuntary relocation proceeding. PCNS-NY further believes that a waiver procedure such as that proposed in its initial comments would provide a better spectrum management tool than an involuntary relocation proceeding.

If an involuntary relocation process is used, the Commission should impose the costs of the proceeding on the "losing" party to encourage contemplation and serious consideration of voluntary migration. Telocator endorses allocating proceeding costs to the "losing party" for the same reasons.<sup>10/</sup>

PCNS-NY opposes the adoption of Commission rules that would dictate the process and contents of relocation negotiations. Commentors with existing OFS facilities have demonstrated in their comments the unique characteristics of each OFS facility. The characteristics of the systems as well as the users will determine how negotiations should proceed. PCNS-NY has been successful in its development of migration techniques because it has approached each user and its system independently and not used a generic approach that stifled negotiations. Accordingly, regulatory restrictions on the relocation process will not accelerate the availability of spectrum for PCS.

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<sup>10/</sup> Telocator Comments at 12-13.



**2. Migration Costs Should Be Limited to Those That Are Reasonable.**

Commentors agree that existing OFS user should not have to bear the burden of the costs of relocation. Commentors differ in what costs appropriately are included as costs of relocation. PCNS-NY's experience in negotiating with existing OFS users has demonstrated that the costs of each system can not be specified by rule or preordained by the Commission. Replacement system costs must be based on a line-by-line cost evaluation of the new system's design and its components. Accordingly, PCNS-NY has proposed that the Commission establish a flexible standard for relocation costs by requiring that all relocation costs be "reasonable." Such a standard will permit the parties to negotiate the costs in the context of a specific system and also provide a specific parameter for the negotiations.

In addition, PCNS-NY maintains, as stated in its comments, that compensation for the additional costs of operating in a different band or migration to other media should be limited to a finite time frame. Operating costs, especially if the system is controlled by the existing OFS user, are outside of the control of the PCS licensee. While it may be reasonable to provide existing OFS users with a buffer for a finite transition period, continual coverage of increased operating costs would expose PCS licensees to potentially unlimited liability and increase the cost of PCS.

**3. The Commission Should Adhere To Its Policy of Licensing New Facilities On A Secondary Basis Only.**

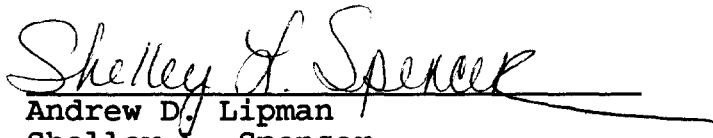
Sound spectrum management policies require advance planning. The Commission's proposal to award new OFS licenses and certain modifications on a secondary basis only exemplifies a policy of sound advance planning. PCNS-NY disagrees with the Association of American Railroads ("AAR") that licenses for expansion of OFS facilities and modifications must be granted on a primary basis or microwave licensees will be forced to consider other bands that AAR alleges are less reliable and/or more costly even if the spectrum is not used by a PCS licensee. If the spectrum is not used by a licensee for PCS or other emerging technologies there will be no interference and the status of the new OFS facility is irrelevant. Furthermore, accommodations can be made, and often are made, to permit microwave facilities operating on different frequencies to interface with an existing 2 GHz network. The replacement of individual 2 GHz OFS links does not require an OFS licensee to replace its entire 2 GHz OFS network.

The ability of existing OFS users to expand and modify facilities on a primary basis will result in a flood of applications to the Commission as existing OFS users rush to get their facilities licensed prior to PCS licensing and obtain not only co-primary status but primary use of the band through application of the Commission's first-in-time rule. Accordingly,

the Commission should abide by its sound spectrum management planning policy and only grant applications filed for new OFS facilities after January 16, 1992 on a secondary basis.

Respectfully submitted,

PERSONAL COMMUNICATIONS  
NETWORK SERVICES OF NEW YORK, INC.,  
A LOCATE COMPANY

  
Andrew D. Lipman  
Shelley L. Spencer  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
(202) 944-4798

Its Attorneys

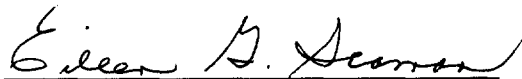
February 12, 1993

CERTIFICATE OF SERVICE

I, Eileen G. Seaman, a secretary with the law firm of Swidler & Berlin, Chartered, hereby certify that I have sent, on this 12th day of February, 1993, by hand delivery, copies of the foregoing Reply Comments of Personal Communications Network Services of New York, Inc., a LOCATE Company, on the Third Notice of Proposed Rulemaking to the following:

Dr. Thomas Stanley  
Chief, Office of Engineering &  
Technology  
Federal Communications Commission  
Room 7332  
2025 M Street, N.W.  
Washington, D.C. 20554

David R. Siddall  
Federal Communications Commission  
Room 7102-A  
2025 M Street, N.W.  
Washington, D.C. 20554

  
Eileen G. Seaman